THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.6652 OF 1997

ORDER:

The petitioner is a Co-operative House Building Society. This writ petition is filed seeking a declaration that the alleged action of the respondents in attempting to demolish the structures raised by the members of the petitioner-Society in Sy.Nos.6, 8 and 11 of Bahlulkhan Guda, Balkampet, Hyderabad, to an extent of 1,707 sq. meters as arbitrary and illegal.

It is stated that the petitioner-Society purchased vacant land to an extent of about Ac.8.00 situated in Sy.Nos.6, 8 and 11 of Bahlulkhan Guda, Balkampet, Hyderaba, in the year 1979 from one Sandaiah under different registered sale deeds after obtaining permission from the Special Officer and Competent Authority. Thereafter, the petitioner-Society developed the land and divided the same into house plots as per the approved lay-out and allotted the same to its members. The members of the petitioner-Society constructed houses on their respective plots and started residing therein.

While so, by order dated 6.4.1985, the second respondent-Special Officer and Competent Authority under the Urban Land (Ceiling and Regulation) Act, 1976 (for short "the Act") declared the petitioner's vendor M. Sandaiah as surplus land holder to an extent of 1,335 sq. metres. Since the said land was purchased by the petitioner-Society long back in the year 1979 and the members of the petitioner-Society are in actual possession of the same, the petitioner-Society made a representation dated 23.5.1985 to the 1st respondent requesting to exempt the surplus land held by their vendor M. Sandaiah and the sales effected in their favour in the year 1979 may be regularized. While the said representation was pending with the 1st respondent, the officials of the Revenue Department, on the basis of the proceedings of the 2nd respondent dated 6.4.1985, started

interfering with the possession of the members of the petitioner-Society threatening to demolish the houses constructed by them. Hence, this writ petition.

In the counter-affidavit filed by the 2nd respondent, it is stated that the vendor of the petitioner-Society M. Sandaiah filed a declaration under Section 6 of the Act with regard to the properties held by him under Hindu Undivided Family. After due enquiry, it was held that he was holding surplus land to an extent of 2.335.88 sq. metres, out of which he was allowed to retain 785.12 sq. meters in Sy.Nos.6, 8 and 11 Bahlulkhan Guda, Balkampet, and 214.88 sq. meters in premises bearing No.7-1-253 of Bahlulkhan Guda village under Section 4(1)(b) of the Act. Thus, he was determined as surplus vacant land holder to an extent of 1,335.88 sq. meters in Sy.Nos.6, 8 and 11 of Bahlulkhan Guda village and a draft statement was served on him accordingly. In response to the same, the declarant filed an Objection Petition on 6.7.1978. However in spite of several opportunities, he failed to attend the personal hearing. The objections raised by the declarant were considered on the basis of the material available on record and final order was passed on 6.4.1985 determining him as surplus land holder to an extent of 1,335.88 sq. meters. Pursuant thereto, notification under Section 10(1) of the Act was also published in the A.P. Gazette dated 28.2.1987 and a draft declaration under Section 10(3) of the Act was issued on 14.7.1984. Since the petitioner-Society purchased the land from the declarant pending the proceedings under the Act, all the said transactions are null and void, and therefore, the petitioner-Society cannot claim to have acquired TITLE over the said property.

I have heard the learned counsel for both the parties and perused the material on record.

Admittedly, the vendor of the petitioner-Society filed a declaration much prior to the execution of the sale deeds in favour of the petitioner-Society. As a matter of fact, pursuant to the draft statement served on the vendor of the petitioner-Society, he submitted

his Objection Petition on 6.7.1978 i.e., prior to the sales in favor of the petitioner-Society.

Section 5(3) of the Act prohibits transfer of vacant land by way of sale held by the surplus holder, and such sale is also declared as *null and void.* Sub-section (3) of Section 5 may be extracted hereunder:

> "5(3) In any State to which this Act applies in the first instance and in any State which adopts this Act under clause (1) of Article 252 of the Constitution, no person holding vacant land in excess of the ceiling limit immediately before the commencement of this Act shall transfer any such land or part thereof by way of sale, mortgage, gift, lease or otherwise until he has furnished a statement under Section 6 and a notification regarding the excess vacant land held by him has been published under sub-section (1) of Section 10, and any such transfer made in contravention of this provision shall be deemed to be null and void."

From the facts, which are not disputed, it is clear that the petitioner's vendor was holding vacant land in excess of the ceiling limit immediately before the commencement of the Act and that the transfer of land in favour of the petitioner-Society was effected prior to the publication of the notification under Section 10(1) of the Act on 28.2.1987. Hence, as rightly contended by the respondents the transfer of land in favour of petitioner-Society is *null and void.*

However, it is contended by the petitioner that since one of the sons of the declarant was described in the sale deed as major, the determination made by the competent authority without notice to the major son as well as the petitioner-Society who acquired land from both the declarant and his son is arbitrary and illegal.

It is to be noted that no such objection was raised by the declarant in the Objection Petition filed by him on 6.7.1978. Moreover, in spite of notice, he failed to participate in the enquiry and, therefore, the declaration under Section 10(1) was published on 28.2.1987. The vendor of the petitioner-Society did not challenge the said proceedings and he is not made a party even to this writ petition. Hence, the

contention raised by the petitioner that the computation made under Section 8 was bad since there was no opportunity to the petitioner-Society to raise objections, is untenable.

For the aforesaid reasons, the determination made by the 2nd respondent, which attained finality, cannot be reopened at this stage, at the instance of the petitioner-Society, who acquired surplus land in contravention of the provisions of the Act.

However, since it is admitted in the counter-affidavit that the application made by the petitioner-Society under Section 20 of the Act seeking exemption is pending before the 1st respondent, I deem it appropriate to dispose of the writ petition with a direction to the 1st respondent to consider the application of the petitioner-Society and pass appropriate orders in accordance with law. Till such time, the respondents are directed not to demolish the structures made by the petitioner-Society on the land in question. No costs.

G. ROHINI, J.

Dt. 5-10-2007
kgr

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.6652 OF 1997

DATED: 5-10-2007

Between:

Aravinda Nagar Co-operative House
Building Society Ltd., represented by
President – S. Gangi Reddy. ... Petitioner.

And

Government of A.P., represented by
Secretary, Revenue Department,
Secretariat, Hyderabad and another. ..
Respondents